

The defendants, with the knowledge of their brother, the plaintiff's predecessor in title, enjoyed two-thirds of the land as their own for over thirty years, the first defendant for about forty-six years and the second for about thirty-six years. His evidence and his conduct show that he was not unaware of his rights and that he assented to the defendants' dealing with the lands in the way they did. He cannot now be allowed, after standing by, with a knowledge of his rights, to deny the defendants the right to the land which they have enjoyed as their own for so many years.

The appeal is dismissed with costs.

GRATIAEN J.—I agree that the appeal should be dismissed with costs.

*Appeal dismissed.*

1949

*Present: Gratiaen J.*

KRISHNAKUTTY, Appellant, and MARIA NONA, Respondent

*S. C. 315—Workmen's Compensation C3/149/47*

*Workmen's Compensation—Night watchman—Going home for dinner—Murdered on way home—Accident not in course of employment.*

The deceased was a night watchman who was not supplied with meals while on duty and therefore returned home every night for dinner. One night he was murdered on his way home on a highway which did not form part of the premises over which he was employed to keep watch.

*Held*, that the accident did not arise out of and in the course of his employment.

**A**PPEAL against an order for compensation under the Workmen's Compensation Ordinance.

*N. K. Choksy, K.C.*, with *J. N. David*, for the appellant.

*Vernon Wijetunge*, for the respondent.

*Cur. adv. vult.*

May 25, 1949. GRATIAEN J.—

This is an appeal against an order for compensation under the Workmen's Compensation Ordinance (Chapter 117) in favour of the widow of a man named Solomon who was at the date of his death employed as a night-watchman on certain premises belonging to the appellant. The question of law which arises for my determination is whether Solomon came by his death in an accident "arising out of and in the course of his employment" under the appellant within the meaning of Section 3 of the Ordinance.

The relevant facts as found by the learned Commissioner are that Solomon's normal hours of duty as a night-watchman were from 6 p.m. till 9 a.m. No meals were supplied to him while on duty, and in the circumstances he returned home each night for a short period to have his dinner. I will assume that he absented himself from his place of duty on these occasions with the knowledge and approval of his employer. On the night of July 30, he was murdered on his way home to dinner. The murder took place on a highway which did not form part of his master's premises over which he had been employed to keep watch.

The learned Commissioner took the view that in all the circumstances of the case "the course of employment had not been interrupted at the time the accident took place", and awarded compensation to Solomon's widow. Were I permitted in exercising my appellate jurisdiction to be swayed by sympathy I should not have been reluctant to affirm this order, but I am bound by the provisions of the statute. The issue arising in cases where an employee meets with an accident when he is "off duty" during the dinner-hour has been answered by the Courts with a consistency which is somewhat rare in Workmen's Compensation claims. In *Parker v. "Black Rock" (owners)*<sup>1</sup> a seaman had signed articles for a coasting voyage, which contained the term "crew to provide their own provisions". When the ship arrived in port he went ashore to buy the necessary provisions, and then returned in the direction of the pier where the ship was lying. It was a dark and stormy night, and the next day the unfortunate man's corpse was found floating in the water near the pier. The House of Lords decided that the accident by which he lost his life did not arise out of his employment. "It is not sufficient," said Lord Parker, "that the accident happened during a period when the man was lawfully absent from the vessel. In order to make it an accident arising out of the employment, the absence must be in pursuance of a duty owed to the employer". The argument that the man's absence arose from the need for food was ruled to be irrelevant on the ground that that was "a necessity common to all mankind". A later decision of the Court of Appeal in *Bell v. Armstrong Whitworth & Co.*<sup>2</sup> went even further. In that case a workman left the premises during the luncheon interval to go to a canteen specially provided for the purpose by his employers. The canteen was some distance from the employers' gates at the opposite side of a public highway. The employee was knocked down and killed by a lorry on the highway as he was approaching the canteen. It was held that the principle laid down in *Parker v. "Black Rock" (owners)*<sup>3</sup> applied, and that the fact that the employers by installing the canteen had in a sense invited the workman to go there did not affect the position.

Learned Counsel for the widow relied on *Armstrong Whitworth v. Redford*<sup>4</sup> but the facts of that case are very clearly distinguishable, because there the workman returning to work after lunch from a canteen met with an accident as he was coming down the stairs "which were the provided means of access from part of the employers' premises to the

<sup>1</sup> (1915) A. C. 725.

<sup>3</sup> (1915) A. C. 725.

<sup>2</sup> (1919) 88 L. J. K. B. 844.

<sup>4</sup> (1920) A. C. 757.

particular part where the machines were, where he slipped and fell" (*per* Lord Sumner). I note that in his opinion Lord Sumner agreed that if the accident had happened in the street, the case would have been different.

In the present case Solomon came by his death when he was on the highway for a purpose (no doubt a very necessary purpose) of his own. He was not there in respect of any special duty which he owed to his master. It therefore follows that the accident did not arise "out of and in the course of" his employment within the meaning of the Ordinance. I set aside the order appealed from, but make no order as to costs.

*Order set aside.*

1949

*Present: Basnayake J.*

DINAPALA, Appellant, and INSPECTOR OF POLICE,  
GALLE, Respondent

*S. C. 954—M. C. Galle, 8,889*

*Explosives Ordinance—Keeping fireworks—Breach of Special Order—Chapter 140—Sections 28 and 7.*

A special order under section 28 of the Explosives Ordinance does not come within the ambit of section 7, and a breach of the order is not punishable under that or any other section.

**A**PPPEAL from a judgment of the Magistrate, Galle.

*D. S. Jayawickrama*, for accused appellant.

*R. A. Kannangara*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

March 23, 1949. BASNAYAKE J.—

The accused-appellant has been convicted of the following charges and ordered to pay a fine of Rs. 150 on the first charge and a fine of Rs. 50 on the second:—

- (1) "That you did, within the jurisdiction of this Court, at Dadalla, on February 20, 1948, keep fireworks containing a mixture of potassium chlorate and aluminium powder in breach of the Special Order No. 1 made under section 28 of Chapter 140